Document 25-6

Filed 11/13/24

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Plaintiff Famous Birthdays, Inc. ("Famous") submitted two declarations in support of its Motion for Preliminary Injunction and a Declaration in support of its Motion to Seal certain documents. The declarations of Evan Britton (Dkt. 11, "Britton Decl.") and (Dkt. 10, "Britton Decl. ISO Sealing"), and Kevin Ostrowski (Dkt. 10-1, "Ostrowski Decl.") are rife with evidentiary defects that violate Civil Local Rule 7-7, Rule 56(c)(4) of the Federal Rules of Civil Procedure, and the Federal Rules of Evidence. For the reasons discussed below, the Court should strike the identified portions of these declarations.

I. **Legal Standards**

"A court must determine admissibility by applying the Federal Rules of Evidence." Orr v. Bank of America, 285 F.3d 764, 778 (9th Cir. 2002). Federal Rule 56(c)(4) and Civil Local Rule 7-7 articulate very specific requirements for a declaration supporting a motion:

Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

Fed. R. Civ. P. 56(c)(4).

L.R. 7-7 Form and Content of Declarations. Declarations shall contain only factual, evidentiary matter and shall conform as far as possible to the requirements of F.R.Civ.P. 56(c)(4).

Civ. L. R. 7-7.

"A declarant must show personal knowledge and competency to testify by the facts stated." Boyd v. City of Oakland, 458 F. Supp. 2d 1015, 1023 (N.D. Cal. 2006) quoting Bank Melli Iran v. Pahlavi, 58 F.3d 1406, 1412 (9th Cir. 1995). "The matters must be known to the declarant personally, as distinguished from matters of opinion or hearsay." Id. "A declarant's mere assertions that he or she possesses personal knowledge and competency to testify are not sufficient." Boyd 458 F. Supp. 2d at

1023 quoting *Barthelemy v. Air Lines Pilots Ass'n*, 897 F.2d 999 (9th Cir. 1990). "A declarant must show personal knowledge and competency 'affirmatively,' under Rule 56(e), for example, by 'the nature of the declarant's position and nature of participation in matter." *Id*.

Famous's declarations also improperly purport to contain expert opinion. For instance, Mr. Ostrowski opines, without support, that the Famous "data is valuable to companies," (Dkt. 10-1, ¶ 9), and Mr. Britton opines without factual support that Passes activity is "undermining [Famous'] ability to protect [its] intellectual property and rendering it vulnerable to unauthorized use and further exploitation" (Dkt. 11-1, ¶ 79). "FRE 702 provides that an expert's testimony must be 'the product of reliable principles and methods." *Dukes v. Wal-Mart, Inc.*, 222 F.R.D. 189, 196 (N.D. Cal. 2004). Famous' declarants, each of whom purports to offer expert testimony, must show that admissibility requirements have been satisfied. *Id.* Here, portions of the Britton and Ostrowski declarations should be stricken, as detailed below, because they lack the "necessary qualifications to render [these] opinion[s] pursuant to Federal Rule of Evidence 702." *Aguilera v. Unocal Corp.*, No. 2:22-CV-01394-FWS-PD, 2023 WL 6369701, at *7 (C.D. Cal. Aug. 14, 2023).

Portions of the Ostrowski and Britton declarations also must be stricken because they contain impermissible legal conclusions. Moreover, to the extent that Messrs. Ostrowski and Britton are attempting to offer testimony about the ultimate issues in this case, their statements constitute inadmissible legal conclusions. *Coca-Cola Co. v. Overland Co.*, 692 F.2d 1250, 1254-55 (9th Cir. 1982) (holding attempt to offer his own legal interpretation and conclusion about the meaning of the purported Agreement is inadmissible); *see also, YKK Corp. v. Jungwoo Zipper Co., Ltd.*, 213 F. Supp. 2d 1195, 1203 (C.D. Cal. 2002) (holding in trademark case that testimony concerning "confusion" was an inadmissible legal conclusion). For instance, Mr. Britton opines that Passes has infringed Famous' rights and is causing confusion. Dkt-11-1, ¶¶ 71, 73, 80. Mr. Ostrowski offers numerous legal conclusions

 about how to interpret Famous Birthdays' Terms of Service and an unspecified "contract." Dkt. 10-1, ¶¶ 10, 11, 21, 29.

For the reasons set forth in the table below, Passes requests that the Court exclude objectionable evidence from the Famous Birthdays Britton and Ostrowski declarations in ruling on Famous Birthdays Motion for Preliminary Injunction.

Obj. No.	Objectionable Evidence	Legal Ground for Objection
	OBJECTIONS TO DECLAR	AATION OF KEVIN OSTROWSKI (DKT. 10-1)
1	The public website contains a robust Terms of Service, which emphasizes that the bios are the intellectual property of Famous Birthdays. Ostrowski Decl., ¶ 6.	Fed. R. Evid. 602. This statement lacks foundation. A witness must lay a foundation before offering testimony about particular facts or documents, establishing that the witness is competent to testify about the matter at hand. Mr. Ostrowski is not an attorney and thus is unqualified to interpret the Terms of Service. Fed. R. Evid. 701, 702. This statement includes improper opinion testimony. Lay witnesses may only offer opinions that are rationally based on their perception and helpful to understanding their testimony. Fed. R. Evid. 1002. Mr. Ostrowski's statement violates the Best Evidence Rule. An original writing, recording, or photograph is required in order to prove its content.

1 2		Obj. No.	Objectionable Evidence	Legal Ground for Objection
3			¶ 10.	
4				Fed. R. Evid. 701, 702. This statement includes
5				improper opinion testimony. Lay witnesses may
6				only offer opinions that are rationally based on
7				their perception and helpful to understanding
8				their testimony.
9				
10				Fed. R. Evid. 1002. Mr. Ostrowski's statement
11				violates the Best Evidence Rule. An original
12				writing, recording, or photograph is required in
13				order to prove its content.
14				Fed. R. Evid. 602. A witness must lay a
15				foundation before offering testimony about
16			Famous Birthdays provides Famous	particular facts or documents, establishing that
17				the witness is competent to testify about the
18				matter at hand. Mr. Ostrowski is not an attorney
19			Birthdays Pro customers	and thus is unqualified to interpret the
20		4	two methods to access	"contractual agreement."
21		•	data provided for in their	
22			contractual agreement.	Fed. R. Evid. 701, 702. This statement includes
23			Ostrowski, ¶ 11.	improper opinion testimony. Lay witnesses may
24			Ostrowski, 11.	only offer opinions that are rationally based on
25				their perception and helpful to understanding
26				their testimony.
27				
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$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3			Fed. R. Evid. 1002. Mr. Ostrowski's statement
4			violates the Best Evidence Rule. An original
5			writing, recording, or photograph is required in
6			order to prove its content.
7			Fed. R. Evid. 602. A witness must lay a
8			foundation before offering testimony about
9			particular facts or documents, establishing that
10			the witness is competent to testify about the
11			matter at hand. Mr. Ostrowski is not an attorney
12		[W]hen it has been	and thus is unqualified to interpret the
13		[W]hen it has been contractually agreed to	"contractual agreement."
14		(as was the case with	
15		Passes), a Famous	Fed. R. Evid. 701, 702. This statement includes
16		Birthdays Pro customer	improper opinion testimony. Lay witnesses may
17	5	is provided limited	only offer opinions that are rationally based on
18		access to Famous	their perception and helpful to understanding
19		Birthdays' API, which is	their testimony.
20		another means to access	
21		Famous Birthdays' data.	Fed. R. Evid. 703. Mr. Ostrowski's statement
22		Ostrowski, ¶ 14.	also improperly offers an opinion on an ultimate
23		7 11	issue in the case.
24			
25			Fed. R. Evid. 1002. In addition, Mr. Ostrowski's
26			statement violates the Best Evidence Rule. An
27			original writing, recording, or photograph is
28			required in order to prove its content.

1	Ohi	Objectionable	
2	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3			Fed. R. Evid. 602. A witness must lay a
4			foundation before offering testimony about
5			particular facts or documents, establishing that
6			the witness is competent to testify about the
7			matter at hand. Mr. Ostrowski is not an attorney
8			and thus is unqualified to interpret the
9			"customer's contract with Famous Birthdays."
10			
11		TI ADI 1 1 1 1	Fed. R. Evid. 701, 702. Lay witnesses may only
12		The API and dashboard	offer opinions that are rationally based on their
13		function similarly, and	perception and helpful to understanding their
14		are both curated to	testimony. According to his public LinkedIn
15		technologically limit the	page, Mr. Ostrowski has a background in
16	6	accessible data to the same limits set forth in	computer arts with a focus on 3D
17		the customer's contract	modeling/animation and FX for film and video.
18		with Famous Birthdays.	Without any foundational support,
19		Ostrowski Decl., ¶ 16.	Mr. Ostrowski opines on how APIs and the
20		Oshowski Deci., 10.	dashboard function to impose background
21			technological limitations.
22			
23			Fed. R. Evid. 703. Mr. Ostrowski's statement
24			also improperly offers an opinion on an ultimate
25			issue in the case.
26			
27			Fed. R. Evid. 1002. In addition, Mr. Ostrowski's
28			statement violates the Best Evidence Rule. An

$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3			original writing, recording, or photograph is
4			required in order to prove its content.
5			Fed. R. Evid. 602. A witness must lay a
6			foundation before offering testimony about
7			particular facts or documents, establishing that
8			the witness is competent to testify about the
9			matter at hand. Mr. Ostrowski is not an attorney
10			and thus is unqualified to interpret the "contract
11		Thus, if a contract limits	limits."
12		a customer to a certain	
13		number of monthly	Fed. R. Evid. 701, 702. Lay witnesses may only
14		searches of profiles of	offer opinions that are rationally based on their
15		celebrities and	perception and helpful to understanding their
16	7	influencers, both the	testimony. According to his public LinkedIn
17		dashboard and the API	page, Mr. Ostrowski has a background in
18		calls contain a technical	computer arts with a focus on 3D
19		limit that prevents the	modeling/animation and FX for film and video.
20		customer from	Without any foundational support,
21		exceeding their	Mr. Ostrowski opines on how APIs and the
22		authorized search limit.	dashboard function to impose background
23			technological limitations.
24			
25			Fed. R. Evid. 703. Mr. Ostrowski's statement
26			also improperly offers an opinion on an ultimate
27			issue in the case.
28			

1	Obj.	Objectionable	
2	No.	Evidence	Legal Ground for Objection
3			Fed. R. Evid. 1002. In addition, Mr. Ostrowski's
4			statement violates the Best Evidence Rule. An
5			original writing, recording, or photograph is
6			required in order to prove its content.
7			
8			Fed. R. Evid. 602. A witness must lay a
9			foundation before offering testimony about
10			particular facts or documents, establishing that
11			the witness is competent to testify about the
12			matter at hand. Mr. Ostrowski is not an attorney
13		There are also Terms of	and thus is unqualified to interpret the Terms of
14		Service on Famous	Service.
15		Birthdays Pro that	
16	8	further advise customers	Fed. R. Evid. 701, 702. Lay witnesses may only
17		of the limitations on their	offer opinions that are rationally based on their
18		use of the platform.	perception and helpful to understanding their
19		Ostrowski Decl., ¶ 17.	testimony.
20			
21			Fed. R. Evid. 1002. In addition, Mr. Ostrowski's
22			statement violates the Best Evidence Rule. An
23			original writing, recording, or photograph is
24			required in order to prove its content.
25		After Famous Birthdays	Fed. R. Evid. 602. Mr. Ostrowski's statement is
26	9	and Passes entered into	conclusory, speculative, and not based on
27		the Services Agreement	
28		between Famous	offer any specific facts to support this conclusion.

1		Obj.	Objectionable	
2		No.	Evidence	Legal Ground for Objection
3			Birthdays and Passes on	Nor does he explain how it is that he has the
4			or about March 29, 2024	knowledge necessary to reach the stated
5			(the "Services	conclusion.
6			Agreement"), Famous	
7			Birthdays provided	Fed. R. Evid. 703. Mr. Ostrowski's statement
8			limited API access and	also improperly offers an opinion on an ultimate
9			Famous Birthdays Pro	issue in the case.
10			login details to Passes.	
11			Ostrowski Decl., ¶ 18.	Fed. R. Evid. 1002. In addition, Mr. Ostrowski's
12				statement violates the Best Evidence Rule. An
13				original writing, recording, or photograph is
14	_			required in order to prove its content.
15				Fed. R. Evid. 602. Mr. Ostrowski's statement is
16				conclusory, speculative, and not based on
17				personal knowledge. Mr. Ostrowski does not
18				offer any specific facts to support this conclusion.
19			These seven API calls	Nor does he explain how it is that he has the
20			are limited in their	knowledge necessary to reach the stated
21		10	functionality consistent	conclusion.
22		10	with the contractual	
23			limitations in the	Fed. R. Evid. 701, 702. This statement includes
24			Services Agreement.	improper opinion testimony. Lay witnesses may
25				only offer opinions that are rationally based on
26				their perception and helpful to understanding
27				their testimony. According to his public LinkedIn
28				page, Mr. Ostrowski has a background in

1	Obj.	Objectionable	
2	No.	Evidence	Legal Ground for Objection
3			computer arts with a focus on 3D
4			modeling/animation and FX for film and video.
5			Without any foundational support,
6			Mr. Ostrowski opines on how APIs and the
7			dashboard function to impose background
8			technological limitations.
9			
10			Fed. R. Evid. 703. Mr. Ostrowski's statement
11			also improperly offers an opinion on an ultimate
12			issue in the case.
13			
14			Fed. R. Evid. 1002. In addition, Mr. Ostrowski's
15			statement violates the Best Evidence Rule. An
16			original writing, recording, or photograph is
17			required in order to prove its content.
18			Fed. R. Evid. 602. Mr. Ostrowski's statement
19			that separate internal API endpoints are
20		Earlita arra internal was	"common for most websites" is conclusory,
21		For its own internal use,	speculative, and not based on personal
22		Famous Birthdays has	knowledge. Mr. Ostrowski does not offer any
23	11	separate internal API	specific facts to support this conclusion. Nor does
24		endpoints, as is common	he explain how it is that he has the knowledge
25		for most websites.	necessary to reach the stated conclusion.
26		Ostrowski Decl., ¶ 23.	
27			Fed. R. Evid. 701, 702. This statement includes
28			improper opinion testimony. Lay witnesses may

1	Obj.	Objectionable	Legal Ground for Objection
2	No.	Evidence	
3			only offer opinions that are rationally based on
4			their perception and helpful to understanding
5			their testimony. According to his public LinkedIn
6			page, Mr. Ostrowski has a background in
7			computer arts with a focus on 3D
8			modeling/animation and FX for film and video.
9		These separate internal	Fed. R. Evid. 602. Mr. Ostrowski does not offer
10		API endpoints were not	any specific facts to support this conclusion. Nor
11	12	shared with Passes, or	does he explain how it is that he has the
12	12	any Famous Birthdays	knowledge necessary to reach the stated
13		Pro customers for that	conclusion.
14		matter. Ostrowski, ¶ 25.	
15			Fed. R. Evid. 602. Mr. Ostrowski does not offer
16			any specific facts to support this conclusion. Nor
17		Passes accessed the	does he explain how it is that he has the
18		Famous Birthdays Pro	knowledge necessary to reach the stated
19	13	dashboard, using Guo's	conclusion.
20		login credentials.	
21		Ostrowski Decl., ¶ 26	Fed. R. Evid. 703. Mr. Ostrowski's statement
22			also improperly offers an opinion on an ultimate
23			issue in the case.
24			Fed. R. Evid. 602. Mr. Ostrowski does not offer
25			any specific facts to support this conclusion. Nor
26	14	Once logged in, a person	does he explain how it is that he has the
27		sophisticated in	knowledge necessary to reach the stated
28		computer science pulled	conclusion.

$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3		up Famous Birthdays'	
4		source code, which can	Fed. R. Evid. 701, 702. This statement also
5		only be done by	includes improper opinion testimony. Lay
6		accessing Famous	witnesses may only offer opinions that are
7		Birthdays' backend code	rationally based on their perception and helpful
8		or reverse engineering its	to understanding their testimony. According to
9		system. Ostrowski Decl.,	his public LinkedIn page, Mr. Ostrowski has a
10		¶ 26	background in computer arts with a focus on 3D
11			modeling/animation and FX for film and video.
12			Fed. R. Evid. 602. Mr. Ostrowski's statement is
13			conclusory, speculative, and not based on
14			personal knowledge. Mr. Ostrowski does not
15		This person then looked	offer any specific facts to support this conclusion.
16		over the various internal	Nor does he explain how it is that he has the
17		API calls used to	knowledge necessary to reach the stated
18		generate the webpage.	conclusion.
19		This person located the	
20	15	API call for historical	Fed. R. Evid. 701, 702. This statement also
21		rank graph data for a	includes improper opinion testimony. Lay
22		given celebrity or	witnesses may only offer opinions that are
23		influencer. Ostrowski	rationally based on their perception and helpful
24		Decl., ¶ 27.	to understanding their testimony. According to
25		, · ·	his public LinkedIn page, Mr. Ostrowski has a
26			background in computer arts with a focus on 3D
27			modeling/animation and FX for film and video.
28			

1 2	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3			Fed. R. Evid. 703. Mr. Ostrowski's statement
4			also improperly offers an opinion on an ultimate
5			issue in the case.
6			Fed. R. Evid. 602. Mr. Ostrowski's statement is
7			conclusory, speculative, and not based on
8			personal knowledge. Mr. Ostrowski does not
9			offer any specific facts to support this conclusion.
10			Nor does he explain how it is that he has the
11		But, instead of using one	knowledge necessary to reach the stated
12		of the API calls provided	conclusion.
13		to Passes pursuant to the	
14		contract, Passes instead	Fed. R. Evid. 701, 702. This statement also
15	16	used the historical rank	includes improper opinion testimony. Lay
16		graph API call that it had	witnesses may only offer opinions that are
17		surreptitiously extracted	rationally based on their perception and helpful
18		from the Famous	to understanding their testimony. According to
19		Birthdays source code	his public LinkedIn page, Mr. Ostrowski has a
20		while logged into the	background in computer arts with a focus on 3D
21		dashboard. Ostrowski	modeling/animation and FX for film and video.
22		Decl., ¶ 29.	Fed. R. Evid. 703. Mr. Ostrowski's statement
23			also improperly offers an opinion on an ultimate
24			issue in the case.
25		A true and correct copy	Fed. R. Evid. 602. Mr. Ostrowski does not offer
26	17	of Famous Birthdays'	any specific facts to support this conclusion. Nor
27		internal dashboard	does he explain how it is that he has the
28			

1	0.1.4		
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3		reflecting the over	knowledge necessary to reach the stated
4		106,000 lookups by Guo	conclusion.
5		is attached hereto as	
6		Exhibit E. Ostrowski	Fed. R. Evid. 1002. In addition, Mr. Ostrowski's
7		Decl., ¶ 30.	statement violates the Best Evidence Rule. An
8			original writing, recording, or photograph is
9			required in order to prove its content.
10			Fed. R. Evid. 602. Mr. Ostrowski does not offer
11			any specific facts to support this conclusion. Nor
12			does he explain how it is that he has the
13			knowledge necessary to reach the stated
14			conclusion.
15 16 17 18 19 20 21 22 23 24 25	18	These lookups could not have been performed with the API documentation provided to Defendants as part of the Services Agreement, Ostrowski Decl., ¶ 31.	Fed. R. Evid. 701, 702. This statement includes improper opinion testimony. Lay witnesses may only offer opinions that are rationally based on their perception and helpful to understanding their testimony. According to his public LinkedIn page, Mr. Ostrowski has a background in computer arts with a focus on 3D modeling/animation and FX for film and video. Fed. R. Evid. 703. Mr. Ostrowski's statement also improperly offers an opinion on an ultimate
			issue in the case.
23 24			modeling/animation and FX for film and views. Fed. R. Evid. 703. Mr. Ostrowski's state also improperly offers an opinion on an ult

1	Obj.	Objectionable Evidence	Legal Ground for Objection
2	1100	Linche	Fed. R. Evid. 602. Mr. Ostrowski does not offer
3			any specific facts to support this conclusion. Nor
4			does he explain how it is that he has the
5		The URL list of our bios,	knowledge necessary to reach the stated
6 7		and their relative ranking	conclusion.
8		by traffic, are not	
9		provided as part of	Fed. R. Evid. 701, 702. This statement includes
10	19	Famous Birthdays Pro,	improper opinion testimony. Lay witnesses may
11		and were not provided in	only offer opinions that are rationally based on
12		the API documentation	their perception and helpful to understanding
13		given to Defendants in	their testimony. According to his public LinkedIn
14		connection with the	page, Mr. Ostrowski has a background in
15		Services Agreement.	computer arts with a focus on 3D
16		Ostrowski Decl., ¶ 32.	modeling/animation and FX for film and video.
17			Fed. R. Evid. 602. Mr. Ostrowski's statement is
18			conclusory, speculative, and not based on
19			personal knowledge. Mr. Ostrowski does not
20		The only way	offer any specific facts to support this conclusion.
21		Defendants could have	Nor does he explain how it is that he has the
22	20	accessed our URL list is	knowledge necessary to reach the stated
23	20	by seeking to exploit our	conclusion.
24		sitemap. Ostrowski	
25		Decl., ¶ 33.	Fed. R. Evid. 701, 702. This statement includes
26			improper opinion testimony. Lay witnesses may
27			only offer opinions that are rationally based on
28			their perception and helpful to understanding

$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3 4			their testimony. According to his public LinkedIn page, Mr. Ostrowski has a background in
5			computer arts with a focus on 3D modeling/animation and FX for film and video.
7 8 9 10			Fed. R. Evid. 703. Mr. Ostrowski's statement also improperly offers an opinion on an ultimate issue in the case.
11		OBJECTIONS TO DECLAR	ATION OF EVAN BRITTON (DKT. No. 11-1)
12 13 14 15 16 17 18		Famous Birthdays registered creative works of authorship with the United States Copyright Office in October 2018,	Fed. R. Evid. 602. Mr. Britton's statement is conclusory, speculative, and not based on personal knowledge. He does not offer any specific facts to support this conclusion. Nor does he explain how it is that he has the knowledge necessary to reach the stated conclusion.
19 20 21 22 23 24 25	21	October 2021, and February 2022, and it corrected its October 2018 registration through a supplemental registration in February 2022 as well. Britton Decl., ¶ 6.	Fed. R. Evid. 701, 702. This statement includes improper opinion testimony. Lay witnesses may only offer opinions that are rationally based on their perception and helpful to understanding their testimony. According to his public LinkedIn page, Mr. Britton has a background in marketing. Fed. R. Evid. 1002. In addition, Mr. Britton's
26 27			statement violates the Best Evidence Rule. An

1 2	Obj.	Objectionable Evidence	Legal Ground for Objection
3			original writing, recording, or photograph is required in order to prove its content.
5 6 7 8 9 10 11 12	22	Exhibits A, B, C, D. Britton Decl., ¶¶ 7-10.	Fed. R. Evid. 602. Mr. Britton's statement about Exhibits A, B, C, and D is conclusory, speculative, and not based on personal knowledge. Fed. R. Evid. 1002. In addition, Mr. Britton's statement violates the Best Evidence Rule. An original writing, recording, or photograph is required in order to prove its content.
13 14 15 16 17 18 19 20 21 22 23 24 25	23	The Terms of Use available on Famous Birthdays' website also inform its users that its "platform contains copyrighted material including, but not limited to, text and video." Britton Decl., ¶	Fed. R. Evid. 602. A witness must lay a foundation before offering testimony about particular facts or documents, establishing that the witness is competent to testify about the matter at hand. Mr. Britton is not an attorney and thus is unqualified to interpret the Terms of Use. Fed. R. Evid. 701, 702. This statement includes improper opinion testimony. Lay witnesses may only offer opinions that are rationally based on their perception and helpful to understanding their testimony. In addition,
2627			Fed. R. Evid. 1002 . In addition, Mr. Britton's statement violates the Best Evidence Rule. An

$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3			original writing, recording, or photograph is
4			required in order to prove its content.
5			Fed. R. Evid. 602. This statement lacks
6			foundation. A witness must lay a foundation
7			before offering testimony about particular facts
8			or documents, establishing that the witness is
9			competent to testify about the matter at hand. Mr.
10		The Terms of Use	Britton is not an attorney and thus is unqualified
11		condition all access to	to interpret the Terms of Use.
12		and use of Famous	
13		Birthdays' platform on	Fed. R. Evid. 701, 702. This statement includes
14		compliance with an	improper opinion testimony. Lay witnesses may
15	24	express prohibition from	only offer opinions that are rationally based on
16		"publishing,	their perception and helpful to understanding
17		transmitting, archiving,	their testimony.
18		or exploiting the content	
19		published on our	Fed. R. Evid. 703. Mr. Britton's statement also
20		platform." Britton Decl.,	improperly offers an opinion on an ultimate issue
21		¶ 11	in the case.
22			
23			Fed. R. Evid. 1002. In addition, Mr. Britton's
24			statement violates the Best Evidence Rule. An
25			original writing, recording, or photograph is
26			required in order to prove its content.
27	25	As a result of its early	
28		and sustained investment	conclusory, speculative, and not based on

1	Obj.	Objectionable	
2	No.	Evidence	Legal Ground for Objection
3		in the booming "creator	personal knowledge. He does not offer any
4		economy," companies	specific facts to support this conclusion. Nor does
5		seek to enter into license	he explain how it is that he has the knowledge
6		agreements with Famous	necessary to reach the stated conclusion.
7		Birthdays to access its	
8		data it obtains by	Fed. R. Evid. 701, 702. This statement includes
9		monitoring user activity,	improper opinion testimony. Lay witnesses may
10		and bios to determine	only offer opinions that are rationally based on
11		which influencers are	their perception and helpful to understanding
12		most applicable to their	their testimony. According to his public LinkedIn
13		marketing needs. Britton	page, Mr. Britton has a background in marketing.
14		Decl., ¶ 12	
15		Famous Birthdays	Fed. R. Evid. 1002. In addition, Mr. Britton's
16		entered into a limited	statement violates the Best Evidence Rule. An
17		services agreement (the	original writing, recording, or photograph is
18		"Services Agreement")	required in order to prove its content.
19	26	with Defendant Passes,	
20		Inc. ("Passes") on March	
21		1, 2024, giving it access	
22		to Famous Birthdays	
23		Pro. Britton Decl., ¶ 14.	
24		The Services Agreement	Fed. R. Evid. 602. Mr. Britton does not offer any
25		limits Passes to 2,500 bio	specific facts to support this conclusion. Nor does
26	27	lookups per month.	he explain how it is that he has the knowledge
27		Britton Decl., ¶ 16.	necessary to reach the stated conclusion.
28		7 II -	

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Obj. No.	Objectionable Evidence	Legal Ground for Objection
		Fed. R. Evid. 703. Mr. Britton's statement also
		improperly offers an opinion on an ultimate issue
		in the case. Mr. Britton is not an attorney and thus
		is unqualified to interpret the Terms of Service.
		Fed. R. Evid. 703. Mr. Britton's statement also
		improperly offers an opinion on an ultimate issue
		in the case.
		Fed. R. Evid. 1002. In addition, Mr. Britton's
		statement violates the Best Evidence Rule. An
		original writing, recording, or photograph is
		required in order to prove its content.
		Fed. R. Evid. 602. Mr. Britton's statement is
		conclusory, speculative, and not based on
	Famous Birthdays'	personal knowledge. He does not offer any
	internal dashboard	specific facts to support this conclusion. Nor does
	reflects that Defendant	he explain how it is that he has the knowledge
	Lucy Guo ("Guo" and	necessary to reach the stated conclusion.
28	with Passes,	
	"Defendants")—alone	Fed. R. Evid. 701, 702. This statement includes
	ran 106,124 lookups in	improper opinion testimony. Lay witnesses may
	the month of April.	only offer opinions that are rationally based on
	Britton Decl., ¶ 16.	their perception and helpful to understanding
		their testimony. Mr. Bitton has a background in
		marketing.

1 2	Obj No.		Legal Ground for Objection
3			
4			Fed. R. Evid. 703. Mr. Britton's statement also
5			improperly offers an opinion on an ultimate issue
6			in the case.
7			
8			Fed. R. Evid. 1002. In addition, Mr. Britton's
9			statement violates the Best Evidence Rule. An
10			original writing, recording, or photograph is
11			required in order to prove its content.
12			Fed. R. Evid. 602. Mr. Britton does not offer any
13			specific facts to support this conclusion. Nor does
14			he explain how it is that he has the knowledge
15			necessary to reach the stated conclusion.
16		After entering into the	
17		Services Agreement, I	Fed. R. Evid. 802. Hearsay is not admissible.
18		learned that Passes	Mr. Britton does not explain how he learned that
19	29	launched a website to	Passes launched a website, but he impermissibly
20		compete with Famous	offers this out of court statement to prove as true
21		Birthdays —	that Passes launched a website to compete with
22		www.passes.com/wiki.	Famous Birthdays.
23		Britton Decl., ¶ 17	
24			Fed. R. Evid. 1002. In addition, Mr. Britton's
25			statement violates the Best Evidence Rule. An
26			original writing, recording, or photograph is
27			required in order to prove its content.

Obj.	Objectionable	Legal Ground for Objection
No.	Evidence	-
		Fed. R. Evid. 602. Mr. Britton's statement is
		conclusory, speculative, and not based on
		personal knowledge. He does not offer any
		specific facts to support this conclusion. Nor does
		he explain how it is that he has the knowledge
		necessary to reach the stated conclusion.
	[A]ll of which are copied	
	from the corresponding	Fed. R. Evid. 701, 702. This statement includes
30	bios from Famous	improper opinion testimony. Lay witnesses may
	Birthdays. Britton Decl.,	only offer opinions that are rationally based on
	¶ 18	their perception and helpful to understanding
		their testimony. According to his public LinkedIn
		page, Mr. Britton has a background in marketing.
		Fed. R. Evid. 703. Mr. Bitton's statement also
		improperly offers an opinion on an ultimate issue
		in the case.
	Based on my review of	Fed. R. Evid. 602. Mr. Britton's statement is
	the bios on Passes wiki,	conclusory, speculative, and not based on
	it's clear that Passes	personal knowledge. He does not offer any
	compiled a list of over	specific facts to support this conclusion. Nor does
31	100,000 URLs unique to	he explain how it is that he has the knowledge
	Famous Birthdays'	necessary to reach the stated conclusion.
	website to use to copy	
	Famous Birthdays' bios	Fed. R. Evid. 701, 702. This statement includes
	Britton Decl., ¶ 20	improper opinion testimony. Lay witnesses may

1 2	Obj.	Objectionable Evidence	Legal Ground for Objection
$\begin{bmatrix} 2 \\ 3 \end{bmatrix}$			only offer opinions that are rationally based on
4			their perception and helpful to understanding
5			their testimony. According to his public LinkedIn
6			page, Mr. Britton has a background in marketing.
7			
8			Fed. R. Evid. 703. Mr. Britton's statement also
9			improperly offers an opinion on an ultimate issue
10			in the case.
11			Fed. R. Evid. 602. Mr. Britton's statement is
12			conclusory, speculative, and not based on
13			personal knowledge. He does not offer any
14		Famous Birthdays staff,	specific facts to support this conclusion. Nor does
15		including myself	he explain how it is that he has the knowledge
16		personally, have	necessary to reach the stated conclusion.
17		identified tens of	
18		thousands of bios	Fed. R. Evid. 701, 702. This statement includes
19	32	featured on Passes Wiki	improper opinion testimony. Lay witnesses may
20		that reflect data and	only offer opinions that are rationally based on
21		copyrighted bios stolen	their perception and helpful to understanding
22		from Famous Birthdays.	their testimony. According to his public LinkedIn
23		Britton Decl., ¶ 21	page, Mr. Britton has a background in marketing.
24		, n	
25			Fed. R. Evid. 703. Mr. Britton's statement also
26			improperly offers an opinion on an ultimate issue
27			in the case.

1			
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3 4 5 6 7 8 9 10 11	33	The result is that Passes Wiki—a public website—now displays over 100,000 bios that are virtually identical to Famous Birthdays' copyrighted bios. Britton	Fed. R. Evid. 602. Mr. Britton's statement is conclusory, speculative, and not based on personal knowledge. He does not offer any specific facts to support this conclusion. Nor does he explain how it is that he has the knowledge necessary to reach the stated conclusion. Fed. R. Evid. 701, 702. This statement includes improper opinion testimony. Lay witnesses may only offer opinions that are rationally based on
12 13 14 15 16		Decl., ¶ 22 To my knowledge,	their perception and helpful to understanding their testimony. According to his public LinkedIn page, Mr. Britton has a background in marketing.
16 17 18 19 20 21 22 23 24 25 26	34	Passes Wiki did not exist when Famous Birthdays entered into the Services Agreement with Passes. It appears Passes Wiki was only launched after, and using the data obtained from, the	conclusory, speculative, and not based on personal knowledge. He does not offer any specific facts to support this conclusion. Nor does he explain how it is that he has the knowledge necessary to reach the stated conclusion. Fed. R. Evid. 703. Mr. Britton's statement also
27		Britton Decl., ¶ 23	

1 2	Obj. No.	Objectionable Evidence	Legal Ground for Objection
,		It appears to solely exist	Fed. R. Evid. 602. Mr. Britton's state
		to confuse search	conclusory, speculative, and not ba
		engines, driving traffic	personal knowledge. He does not or
		from Famous Birthdays	specific facts to support this conclusion.
		to Passes Wiki by being	he explain how it is that he has the kn
		a featured search result,	necessary to reach the stated conclusion.
	35	which then allows Passes	
		to promote its core	Fed. R. Evid. 701, 702. This statement
		business of a subscriber	improper opinion testimony. Lay witnes
		database to connect	only offer opinions that are rationally b
		influencers and creators	their perception and helpful to under
		with companies and	their testimony. According to his public I
		fans. Britton Decl., ¶ 24	page, Mr. Britton has a background in ma
		Famous Birthdays'	Fed. R. Evid. 602. Mr. Britton's state
		forensic analysis	conclusory, speculative, and not ba
		revealed that its API was	personal knowledge. He does not or
		pinged 106,124 times,	specific facts to support this conclusion.
		each time with a unique	he explain how it is that he has the kn
		URL query that would	necessary to reach the stated conclusion.
	36	bring up a different	
		profile, such that a bio	Fed. R. Evid. 701, 702. This statement
		was brought up and	improper opinion testimony. Lay witness
		scraped one by one every	only offer opinions that are rationally b
		2 seconds between April	their perception and helpful to under
		14, 2024 and April 20,	their testimony. According to his public l
		2024. Britton Decl., ¶ 25	page, Mr. Britton has a background in ma

02. Mr. Britton's statement is culative, and not based on dge. He does not offer any apport this conclusion. Nor does t is that he has the knowledge h the stated conclusion.

1. 702. This statement includes testimony. Lay witnesses may ns that are rationally based on and helpful to understanding ccording to his public LinkedIn has a background in marketing. **02**. Mr. Britton's statement is

culative, and not based on dge. He does not offer any apport this conclusion. Nor does t is that he has the knowledge h the stated conclusion.

1, 702. This statement includes testimony. Lay witnesses may ns that are rationally based on and helpful to understanding ccording to his public LinkedIn has a background in marketing.

1	Obj.	Objectionable	
2	No.	Evidence	Legal Ground for Objection
3			Fed. R. Evid. 602. Mr. Britton's statement is
4			conclusory, speculative, and not based on
5			personal knowledge. He does not offer any
6			specific facts to support this conclusion. Nor does
7		The foregoing frequency	he explain how it is that he has the knowledge
8		could not feasibly be	necessary to reach the stated conclusion.
9		achieved by an	
10		individual searching for	Fed. R. Evid. 701, 702. This statement includes
11	37	profiles manually and	improper opinion testimony. Lay witnesses may
12		could only be done	only offer opinions that are rationally based on
13		through use of an	their perception and helpful to understanding
14		automated script. Britton	their testimony. According to his public LinkedIn
15		Decl., ¶ 26	page, Mr. Britton has a background in marketing.
16			
17			Fed. R. Evid. 703. Mr. Britton's statement also
18			improperly offers an opinion on an ultimate issue
19			in the case.
20		At my direction, Famous	Fed. R. Evid. 602. Mr. Britton's statement is
21		Birthdays' staff has	conclusory, speculative, and not based on
22		taken tens of thousands	personal knowledge. He does not offer any
23		of screenshots from	specific facts to support this conclusion. Nor does
24	38	Passes Wiki that reflect	he explain how it is that he has the knowledge
25		bios that have been	necessary to reach the stated conclusion.
26		stolen from Famous	
27		Birthdays. These bios	Fed. R. Evid. 701, 702. This statement includes
28		contain virtually all of	improper opinion testimony. Lay witnesses may

$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$		Obj. No.	Objectionable Evidence	Legal Ground for Objection
3			the same biographical	only offer opinions that are rationally based on
4			details, with identical or	their perception and helpful to understanding
5			near-identical wording,	their testimony. According to his public LinkedIn
6			exclude the same	page, Mr. Britton has a background in marketing.
7			biographical details,	
8			and—where the wording	Fed. R. Evid. 703. Mr. Britton's statement also
9			differs, it appears it only	improperly offers an opinion on an ultimate issue
10			differs because the	in the case.
11			Famous Birthdays' bio	
12			was fed into a chatbot,	
13			which made superficial	
14			tweaks to it before it was	
15			featured on Passes Wiki.	
16	-		Britton Decl., ¶ 27	
17				Fed. R. Evid. 602. Mr. Britton's statement is
18				conclusory, speculative, and not based on
19			Defendants' attorneys	personal knowledge. Mr. Britton does not offer
20			admitted to their use of a	any specific facts to support this conclusion. Nor
21			chatbot in response to a	does he explain how it is that he has the
22		39	cease and desist letter	knowledge necessary to reach the stated
23			from counsel for Famous	conclusion.
24			Birthdays. Britton Decl.,	
25			¶ 28.	Fed. R. Evid. 803. Hearsay is impermissible.
26				Mr. Britton's statement that "Defendants"
27				attorneys admitted" is an impermissible out of

1	Obj. No.	Objectionable Evidence	Legal Ground for Objection
2	110.	Evidence	court statement used to prove the truth of the
3			statement.
4			Fed. R. Evid. 602. Mr. Britton's statement is
5			conclusory, speculative, and not based on
6			personal knowledge. He does not offer any
7			specific facts to support this conclusion. Nor does
8		Even where Famous	
9			
10		Birthdays puts a random	necessary to reach the stated conclusion.
11		profession in a URL—	
12		something which it	Fed. R. Evid. 701, 702. This statement includes
13	40	rarely utilizes for	improper opinion testimony. Lay witnesses may
14		mainstream stars—	only offer opinions that are rationally based on
15		Passes also exactly	their perception and helpful to understanding
16		copies the URL[.]	their testimony. According to his public LinkedIn
17		Britton Decl., ¶ 64	page, Mr. Britton has a background in marketing.
18			
19			Fed. R. Evid. 703. Mr. Britton's statement also
20			improperly offers an opinion on an ultimate issue
21			in the case.
22		Famous Birthdays	Fed. R. Evid. 602. Mr. Britton's statement is
23		investment into this	conclusory, speculative, and not based on
24		space for well over a	personal knowledge. He does not offer any
25	41	decade has gained	specific facts to support this conclusion. Nor does
26		Famous Birthdays	he explain how it is that he has the knowledge
27		valuable search engine	necessary to reach the stated conclusion.
28		positioning that drives	

$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3		users to its website.	Fed. R. Evid. 701, 702. This statement includes
4		Britton Decl., ¶ 66.	improper opinion testimony. Lay witnesses may
5			only offer opinions that are rationally based on
6			their perception and helpful to understanding
7			their testimony. According to his public LinkedIn
8			page, Mr. Britton has a background in marketing.
9			
10			Fed. R. Evid. 703. Mr. Britton's statement also
11			improperly offers an opinion on an ultimate issue
12			in the case.
13		Passes Wiki is now	Fed. R. Evid. 602. Mr. Britton's statement is
14		actively competing with	conclusory, speculative, and not based on
15		the core offering of our	personal knowledge. He does not offer any
16		business by publicly	specific facts to support this conclusion. Nor does
17		displaying bios—which	he explain how it is that he has the knowledge
18		it wrongfully took from	necessary to reach the stated conclusion.
19		Famous Birthdays—on a	
20	42	public-facing website in	Fed. R. Evid. 701, 702. This statement includes
21	•-	a similar format to	improper opinion testimony. Lay witnesses may
22		Famous Birthdays. This	only offer opinions that are rationally based on
23		is creating significant	their perception and helpful to understanding
24		confusion with search	their testimony. According to his public LinkedIn
25		engines, by featuring	page, Mr. Britton has a background in marketing.
26		Famous Birthdays'	
27		proprietary information,	
28		structure, and even URL	

1	Obj.	Objectionable Evidence	Legal Ground for Objection
2 3 4 5 6 7	140.	scheme. Britton Decl., ¶ 67.	Fed. R. Evid. 703. Mr. Britton's statement also improperly offers an opinion on an ultimate issue in the case. Fed. R. Evid. 602. Mr. Britton's statement is conclusory, speculative, and not based on
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	43	Search engine traffic is an essential part of Famous Birthdays' business, and Passes Wiki is actively usurping our search engine positioning, thus diverting traffic from our website. Britton Decl., ¶ 68	personal knowledge. He does not offer any specific facts to support this conclusion. Nor does he explain how it is that he has the knowledge necessary to reach the stated conclusion. Fed. R. Evid. 701, 702. This statement includes improper opinion testimony. Lay witnesses may only offer opinions that are rationally based on their perception and helpful to understanding their testimony. According to his public LinkedIn page, Mr. Britton has a background in marketing. Fed. R. Evid. 703. Mr. Britton's statement also improperly offers an opinion on an ultimate issue in the case.
23 24 25 26 27 28	44	The longer Passes' infringing bios are live on Passes Wiki and indexed by major search engines, the more difficult it will be to	Fed. R. Evid. 602. Mr. Britton's statement is conclusory, speculative, and not based on personal knowledge. He does not offer any

$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3		unwind the long-term	
4		harm on our search	Fed. R. Evid. 701, 702. This statement includes
5		engine optimization	improper opinion testimony. Lay witnesses may
6		("SEO"), as we will	only offer opinions that are rationally based on
7		continue to lose our	their perception and helpful to understanding
8		valuable search engine	their testimony. According to his public LinkedIn
9		positioning that we have	page, Mr. Britton has a background in marketing.
10		obtained through SEO	
11		efforts over the last 12.5	Fed. R. Evid. 703. Mr. Britton's statement also
12		years. Britton Decl., ¶ 68	improperly offers an opinion on an ultimate issue
13			in the case.
14		The longer Passes Wiki	Fed. R. Evid. 602. Mr. Britton's statement is
15		remains on the open	conclusory, speculative, and not based on
16		web, infringing Famous	personal knowledge. He does not offer any
17		Birthdays' Works	specific facts to support this conclusion. Nor does
18		unabated, the more	he explain how it is that he has the knowledge
19		difficult it will be to	necessary to reach the stated conclusion.
20	45	unwind the harm done to	
21		Famous Birthdays'	Fed. R. Evid. 701, 702. This statement includes
22		position as the premiere	improper opinion testimony. Lay witnesses may
23		source of bios in the	only offer opinions that are rationally based on
24		format that we have	their perception and helpful to understanding
25		developed and perfected	their testimony. According to his public LinkedIn
26		over 12.5 years. Britton	page, Mr. Britton has a background in marketing.
27		Decl., ¶ 69	

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1	Obj.	Objectionable	Legal Ground for Objection
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	No. 46	My analysis has shown that Passes Wiki is diverting hundreds of thousands of viewers every month away from Famous Birthdays. Every viewer diverted away from Famous Birthdays is also a potential long-term customer. This is causing us to lose long-term revenue. Britton Decl., ¶ 70.	Fed. R. Evid. 703. Mr. Britton's statement also improperly offers an opinion on an ultimate issue in the case. Fed. R. Evid. 602. Mr. Britton's statement is conclusory, speculative, and not based on personal knowledge. He does not offer any specific facts to support this conclusion. Nor does he explain how it is that he has the knowledge necessary to reach the stated conclusion. Fed. R. Evid. 701, 702. This statement includes improper opinion testimony. Lay witnesses may only offer opinions that are rationally based on their perception and helpful to understanding their testimony. According to his public LinkedIn page, Mr. Britton has a background in marketing. Fed. R. Evid. 703. Mr. Britton's statement also improperly offers an opinion on an ultimate issue
22 23		Passes' infringement has	in the case. Fed. R. Evid. 602. Mr. Britton's statement is
24		impacted Famous	conclusory, speculative, and not based on
25	47	Birthdays' SEO,	personal knowledge. He does not offer any
26		confusing search	
27		engines. Britton Decl., ¶	he explain how it is that he has the knowledge
28		71.	necessary to reach the stated conclusion.

$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Obj. No.	Objectionable Evidence	Legal Ground for Objection
$\begin{bmatrix} 2 \\ 3 \end{bmatrix}$			
4			Fed. R. Evid. 701, 702. This statement includes
5			improper opinion testimony. Lay witnesses may
6			only offer opinions that are rationally based on
7			their perception and helpful to understanding
8			their testimony. According to his public LinkedIn
9			page, Mr. Britton has a background in marketing.
10			
11			Fed. R. Evid. 703. Mr. Britton's statement also
12			improperly offers an opinion on an ultimate issue
13			in the case.
14 15 16 17 18 19		My analysis, including third-party analytical data I have reviewed, shows that Passes is diverting hundreds of	Fed. R. Evid. 602. Mr. Britton's statement is conclusory, speculative, and not based on personal knowledge. He does not offer any specific facts to support this conclusion. Nor does he explain how it is that he has the knowledge necessary to reach the stated conclusion.
20 21 22 23 24 25 26 27	48	thousands of visitors to Passes Wiki, which visitors would otherwise be visitors of Famous Birthdays. Britton Decl., ¶ 72.	Fed. R. Evid. 701, 702. This statement includes improper opinion testimony. Lay witnesses may only offer opinions that are rationally based on their perception and helpful to understanding their testimony. According to his public LinkedIn page, Mr. Britton has a background in marketing.

$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Obj. No.	Objectionable Evidence	Legal Ground for Objection
$\begin{bmatrix} 2 \\ 3 \end{bmatrix}$	1100	Difference	Fed. R. Evid. 703. Mr. Britton's statement also
4			improperly offers an opinion on an ultimate issue
5			in the case.
6			
7			Fed. R. Evid. 803. Hearsay is impermissible. Mr.
8			Britton refers to unidentified "third-party
9			analytical data," which is an out-of-court
10			statement to prove the truth of his statement.
11		For some keyword	Fed. R. Evid. 602. Mr. Britton's statement is
12		searches, Passes ranks	conclusory, speculative, and not based on
13		above Famous Birthdays	personal knowledge. He does not offer any
14		in search results for	specific facts to support this conclusion. Nor does
15		Famous Birthdays' own	he explain how it is that he has the knowledge
16		biographical listing, and	necessary to reach the stated conclusion.
17		in some cases, Passes is	
18		shown in the featured	Fed. R. Evid. 701, 702. This statement includes
19	49	snippets, instead of	improper opinion testimony. Lay witnesses may
20		Famous Birthdays, and	only offer opinions that are rationally based on
21		in other cases Passes	their perception and helpful to understanding
22		Wiki is a result below	their testimony. According to his public LinkedIn
23		_	page, Mr. Britton has a background in marketing.
24		still on the same page,	
25		which also causes	Fed. R. Evid. 703. Mr. Britton's statement also
26		confusion. Britton Decl.,	
27		¶ 73.	in the case.

1	Obj.	Objectionable	
2	No.	Evidence	Legal Ground for Objection
3			Fed. R. Evid. 602. Mr. Britton's statement is
4			conclusory, speculative, and not based on
5			personal knowledge. He does not offer any
6			specific facts to support this conclusion. Nor does
7		Passes is diverting	he explain how it is that he has the knowledge
8		hundreds of thousands of	necessary to reach the stated conclusion.
9		users per month away	
10		from Famous Birthdays,	Fed. R. Evid. 701, 702. This statement includes
11	50	which is causing Passes	improper opinion testimony. Lay witnesses may
12		to lose potential long-	only offer opinions that are rationally based on
13		term users and future	their perception and helpful to understanding
14		revenue. Britton Decl., ¶	their testimony. According to his public LinkedIn
15		76.	page, Mr. Britton has a background in marketing.
16			
17			Fed. R. Evid. 703. Mr. Britton's statement also
18			improperly offers an opinion on an ultimate issue
19			in the case.
20		Indeed, Passes Wiki	Fed. R. Evid. 602. Mr. Britton's statement is
21		includes sign-up and	conclusory, speculative, and not based on
22		referral buttons,	personal knowledge. He does not offer any
23		attempting to gain long-	specific facts to support this conclusion. Nor does
24	51	term loyal users for	he explain how it is that he has the knowledge
25		Passes' services through	necessary to reach the stated conclusion.
26		its use of Famous	
27		Birthdays' copyrighted	Fed. R. Evid. 701, 702. This statement includes
28		bios. Every such user is a	improper opinion testimony. Lay witnesses may

1			
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3		potential Famous	only offer opinions that are rationally based on
4		Birthdays user that	their perception and helpful to understanding
5		Famous Birthdays may	their testimony. According to his public LinkedIn
6		not be able to recapture.	page, Mr. Britton has a background in marketing.
7		Britton Decl., ¶ 76.	
8			Fed. R. Evid. 703. Mr. Britton's statement also
9			improperly offers an opinion on an ultimate issue
10			in the case.
11			Fed. R. Evid. 602. Mr. Britton's statement is
12			conclusory, speculative, and not based on
13			personal knowledge. He does not offer any
14			specific facts to support this conclusion. Nor does
15		The harm will continue	he explain how it is that he has the knowledge
16		to compound until	necessary to reach the stated conclusion.
17	52	Passes' infringement is	
18		put to an end. Britton	Fed. R. Evid. 701, 702. This statement includes
19		Decl., ¶ 77.	improper opinion testimony. Lay witnesses may
20			only offer opinions that are rationally based on
21			their perception and helpful to understanding
22			their testimony. According to his public LinkedIn
23			page, Mr. Britton has a background in marketing.
24		Passes' infringement,	Fed. R. Evid. 602.Mr. Britton's statement is
25		which is publicly putting	conclusory, speculative, and not based on
26	53	Famous Birthdays'	personal knowledge. He does not offer any
27		copyrighted bios on the	specific facts to support this conclusion. Nor does
28		open web, without any	

$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3		Terms of Service, notice	he explain how it is that he has the knowledge
4		of copyright protections,	necessary to reach the stated conclusion.
5		or other warnings to the	
6		public, is also devaluing	Fed. R. Evid. 701, 702. This statement includes
7		Famous Birthdays'	improper opinion testimony. Lay witnesses may
8		intellectual property.	only offer opinions that are rationally based on
9		Britton Decl., ¶ 78.	their perception and helpful to understanding
10			their testimony. According to his public LinkedIn
11			page, Mr. Britton has a background in marketing.
12			
13			Fed. R. Evid. 703. Mr. Britton's statement also
14			improperly offers an opinion on an ultimate issue
15			in the case.
16		Passes Wiki users can	Fed. R. Evid. 602. Mr. Britton's statement is
17		now manipulate and	conclusory, speculative, and not based on
18		misuse the content on	personal knowledge. He does not offer any
19		Passes Wiki, as they	specific facts to support this conclusion. Nor does
20		have no notice	he explain how it is that he has the knowledge
21		whatsoever that the	necessary to reach the stated conclusion.
22	54	content is itself	
23		infringing on Famous	Fed. R. Evid. 701, 702. This statement includes
24		Birthdays' copyrighted	improper opinion testimony. Lay witnesses may
25		Works—the bios are	only offer opinions that are rationally based on
26		simply presented on	their perception and helpful to understanding
27		Passes Wiki without any	their testimony. According to his public LinkedIn
28		restrictions on public use	page, Mr. Britton has a background in marketing.

1	Obj.	Objectionable	
2	No.	Evidence	Legal Ground for Objection
3		of them. This is severely	
4		undermining our ability	Fed. R. Evid. 703. Mr. Britton's statement also
5		to protect our intellectual	improperly offers an opinion on an ultimate issue
6		property and rendering it	in the case.
7		vulnerable to	
8		unauthorized use and	
9		further exploitation.	
10		Britton Decl., ¶ 79.	
11			Fed. R. Evid. 602. Mr. Britton's statement is
12			conclusory, speculative, and not based on
13		This is also creating	personal knowledge. He does not offer any
14		confusion for users, by	specific facts to support this conclusion. Nor does
15		devaluing our IP on the	he explain how it is that he has the knowledge
16		public web, as Passes	necessary to reach the stated conclusion.
17	55	Wiki is presenting these	
18		bios without any	Fed. R. Evid. 701, 702. This statement includes
19		protections. Britton	improper opinion testimony. Lay witnesses may
20		Decl., ¶ 80	only offer opinions that are rationally based on
21		<i>7</i> "	their perception and helpful to understanding
22			their testimony. According to his public LinkedIn
23			page, Mr. Britton has a background in marketing.
24		Passes Wiki is actively	Fed. R. Evid. 602. Mr. Britton's statement is
25		hurting Famous	conclusory, speculative, and not based on
26	56	Birthdays Pro's	personal knowledge. He does not offer any
27		marketing pitch, which	specific facts to support this conclusion. Nor does
28		relies on first-party	

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$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$		Obj. No.	Objectionable Evidence	Legal Ground for Objection
3			proprietary bios that can	he explain how it is that he has the knowledge
4			only be leveraged within	necessary to reach the stated conclusion.
5			Famous Birthdays Pro.	
6			Britton Decl., ¶ 81.	Fed. R. Evid. 701, 702. This statement includes
7				improper opinion testimony. Lay witnesses may
8				only offer opinions that are rationally based on
9				their perception and helpful to understanding
10				their testimony. According to his public LinkedIn
11				page, Mr. Britton has a background in marketing.
12				
13				Fed. R. Evid. 703. Mr. Britton's statement also
14				improperly offers an opinion on an ultimate issue
15				in the case.
16		OB	BJECTIONS TO BRITTON DE	CCLARATION IN SUPPORT OF MOTION TO SEAL
17				(DKT. 10)
18				Fed. R. Evid. 602. Mr. Britton's statement is
19			Exhibits B, C, and D to	conclusory, speculative, and not based on
20			the Ostrowski	personal knowledge. He does not offer any
21			Declaration contain	specific facts to support this conclusion. Nor does
22			Famous Birthdays'	he explain how it is that he has the knowledge
23		57	confidential source code	necessary to reach the stated conclusion. A
24			and Application	witness must lay a foundation before offering
25			Programming Interface	testimony about particular facts or documents,
26			("API") calls. Britton	establishing that the witness is competent to
27			Decl. ISO Sealing, ¶ 2.	testify about the matter at hand.
28				

1 2	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3			Fed. R. Evid. 1002. In addition, Mr. Britton's
4			statement violates the Best Evidence Rule. An
5			original writing, recording, or photograph is
6			required in order to prove its content.
7			
8			Fed. R. Evid. 703. Mr. Britton's statement also
9			improperly offers an opinion on an ultimate issue
10			in the case.
11			Fed. R. Evid. 602. Mr. Britton's statement is
12		Declaration Exhibit B	conclusory, speculative, and not based on
13		consists of API	personal knowledge. He does not offer any
14		instructions Famous	specific facts to support this conclusion. Nor does
15		Birthdays provided to	he explain how it is that he has the knowledge
16		Defendant Passes, Inc.	necessary to reach the stated conclusion. A
17		("Passes"), in	witness must lay a foundation before offering
18		connection with the	testimony about particular facts or documents,
19	58	services agreement	establishing that the witness is competent to
20		between the parties.	testify about the matter at hand.
21		These API instructions	
22		are not publicly available	
23		and are only provided to	Fed. R. Evid. 1002. In addition, Mr. Britton's
24		paying Famous	statement violates the Best Evidence Rule. An
25		Birthdays' customers,	original writing, recording, or photograph is
26		subject to strict	required in order to prove its content.
27		contractual terms.	

1	Obj.	Objectionable	
2	No.	Evidence	Legal Ground for Objection
3		Britton Decl. ISO	
4		Sealing, ¶ 3.	
5			Fed. R. Evid. 602. Mr. Britton's statement is
6			conclusory, speculative, and not based on
7			personal knowledge. He does not offer any
8			specific facts to support this conclusion. Nor does
9			he explain how it is that he has the knowledge
10			necessary to reach the stated conclusion. A
11			witness must lay a foundation before offering
12		These instructions allow clients to access Famous	testimony about particular facts or documents,
13			establishing that the witness is competent to
14		Birthdays' API by	testify about the matter at hand.
15		pinging it with specified	
16	59	"calls" that then retrieve	Fed. R. Evid. 701, 702. This statement includes
17		information from	improper opinion testimony. Mr. Britton has a
18		Famous Birthdays' API.	marketing background. Lay witnesses may only
19		Britton Decl. ISO	offer opinions that are rationally based on their
20		Sealing, ¶ 4.	perception and helpful to understanding their
21		3) II	testimony.
22			
23			Fed. R. Evid. 703. Mr. Britton's statement also
24			improperly offers an opinion on an ultimate issue
25			in the case.
26			
27			Fed. R. Evid. 1002. In addition, Mr. Britton's
28			statement violates the Best Evidence Rule. An

1	Oh:	Objectionable	
2	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3			original writing, recording, or photograph is
4			required in order to prove its content.
5			Fed. R. Evid. 602. Mr. Britton's statement is
6			conclusory, speculative, and not based on
7			personal knowledge. He does not offer any
8			specific facts to support this conclusion. Nor does
9			he explain how it is that he has the knowledge
10			necessary to reach the stated conclusion. A
11			witness must lay a foundation before offering
12		The information	testimony about particular facts or documents,
13		contained in Famous	establishing that the witness is competent to
14		Birthdays' API includes	testify about the matter at hand.
15		its copyrighted	
16	60	biographies of over	Fed. R. Evid. 701, 702. This statement includes
17		100,000 celebrities and	improper opinion testimony Mr. Britton has a
18		influencers, which are	marketing background. Lay witnesses may only
19		the backbone of its	offer opinions that are rationally based on their
20		business. Britton Decl.	perception and helpful to understanding their
21		ISO Sealing, ¶ 5.	testimony.
22			
23			Fed. R. Evid. 703. Mr. Britton's statement also
24			improperly offers an opinion on an ultimate issue
25			in the case.
26			
27			Fed. R. Evid. 1002. In addition, Mr. Britton's
28			statement violates the Best Evidence Rule. An

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1		Obj.	Objectionable Evidence	Legal Ground for Objection
2		No.	Evidence	· ·
3				original writing, recording, or photograph is
4				required in order to prove its content.
5				Fed. R. Evid. 602. Mr. Britton's statement is
6				conclusory, speculative, and not based on
7				personal knowledge. He does not offer any
8			Allowing Famous	specific facts to support this conclusion. Nor does
9			Birthdays' API call	he explain how it is that he has the knowledge
10			instructions to be	necessary to reach the stated conclusion.
11			publicly available would	
12			render its API vulnerable	Fed. R. Evid. 701, 702. This statement includes
13		61	to security breaches and	improper opinion testimony. Lay witnesses may
14			would also allow	only offer opinions that are rationally based on
15			competitors to view how	their perception and helpful to understanding
16			it constructs its API.	their testimony. According to his public LinkedIn
17			Britton Decl. ISO	page, Mr. Britton has a background in marketing.
18			Sealing, ¶ 6.	
19				Fed. R. Evid. 703. Mr. Britton's statement also
20				improperly offers an opinion on an ultimate issue
21				in the case.
22			Ostrowski Declaration	Fed. R. Evid. 602. Mr. Britton's statement is
23			Exhibit C consists of a	conclusory, speculative, and not based on
24			screenshot from Famous	personal knowledge. He does not offer any
25		62	Birthdays' paywalled	specific facts to support this conclusion. Nor does
26			"Famous Birthdays Pro"	he explain how it is that he has the knowledge
27			website, which is only	necessary to reach the stated conclusion.
28			accessible to paying	

$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Obj. No.	Objectionable Evidence	Legal Ground for Objection
3		clients, subject to strict	Fed. R. Evid. 701, 702. This statement includes
4		contractual terms and	improper opinion testimony. Lay witnesses may
5		Terms of Use. This	only offer opinions that are rationally based on
6		screenshot also shows	their perception and helpful to understanding
7		the back-end source code	their testimony. According to his public LinkedIn
8		that populates Famous	page, Mr. Britton has a background in marketing.
9		Birthdays Pro, including	
10		Famous Birthdays'	Fed. R. Evid. 703. Mr. Britton's statement also
11		internal API calls that	improperly offers an opinion on an ultimate issue
12		can be used to ping	in the case.
13		Famous Birthdays' API	
14		and retrieve information	
15		that is only meant for	
16		Famous Birthdays	
17		personnel. Britton Decl.	
18		ISO Sealing, ¶ 7.	
19		Ostrowski Declaration	Fed. R. Evid. 602. Mr. Britton's statement is
20		Exhibit D is the access	conclusory, speculative, and not based on
21		log showing that Passes	personal knowledge. He does not offer any
22		pinged Famous	specific facts to support this conclusion. Nor does
23	63	Birthdays' API, with the	he explain how it is that he has the knowledge.
24		internal API call	
25		surreptitiously taken	Fed. R. Evid. 701, 702. This statement includes
26		from the Famous	improper opinion testimony. Lay witnesses may
27		Birthdays Pro source	only offer opinions that are rationally based on
28		code, over 100,000	their perception and helpful to understanding

Obj. No.	Objectionable Evidence	Legal Ground for Objection
	times. Because this also	their testimony. According to his public LinkedIn
	contains Famous	page, Mr. Britton has a background in marketing.
	Birthdays' internal API	necessary to reach the stated conclusion.
	call, public display of it	
	carries the same risks of	
	competitive harm and	
	hacking as Ostrowski	
	Declaration Exhibit C.	
	Britton Decl. ISO	
	Sealing, ¶ 9.	
	My understanding is no	Fed. R. Evid. 602. Mr. Britton's statement is
	other party has yet	conclusory, speculative, and not based on
	appeared in this matter,	personal knowledge. He does not offer any
64	thus I am unaware if any	specific facts to support this conclusion. Nor does
	party opposes this	he explain how it is that he has the knowledge
	Application. Britton	necessary to reach the stated conclusion.
	Decl. ISO Sealing, ¶ 10.	

21 Dated: November 12, 2024

Respectfully submitted,

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